

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MARK VALDEZ,

Petitioner,

v.

CIV 03-0423 MCA/KBM

LAWRENCE TAFOYA, Warden, et al.,

Respondents.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

This matter is before the Court on supplemental briefing by Respondent concerning the issue of the timeliness of Mark Valdez' § 2254 petition. *Doc. 14*. As noted in an earlier order, the petition is time-barred and subject to dismissal under the applicable one-year limitations period absent a basis for equitable tolling or a basis for considering an earlier attempted filing as "properly filed." *See Doc. 13*. For the reasons stated in the supplemental brief, which I incorporate by reference, I find neither exception applies to this case. Consequently, the petition is time-barred and the action should be dismissed.

Wherefore,

IT IS HEREBY RECOMMENDED that Respondent's motion to dismiss (*Doc. 11*) be GRANTED, Petitioner's motion for appointment of counsel (*Doc. 3*) be DENIED, and the § 2254 petition DISMISSED WITH PREJUDICE.

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 10 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the ten-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**


UNITED STATES MAGISTRATE JUDGE